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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,444	11/14/2003	Clifford D. Bennett	442005-00108	9620

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EXAMINER
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LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

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09/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/713,444	Applicant(s) BENNETT, CLIFFORD D.	
	Examiner Jessica Laux	Art Unit 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 15, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 06/21/2007 have been fully considered but they are not persuasive.

#### **Regarding applicant's arguments to the Hanson reference:**

Applicant argues that the receptacles of Hanson are not capable of receiving post-tension cable after final placement. Examiner disagrees noting that the receptacles of Hanson are capable of having the cables slide through into placement. Therefore the claimed limitations are met.

Applicant argues that the third cable of Hanson is not capable of supporting reinforcement cable above the bottom of a concrete form and that it cannot be a post tension cable as it cannot perform the function as is known in the art in view of American Concrete Institute Codes. Examiner notes that the argument regarding post tensioning cables, a cable is certainly capable of being used, further the claim does not limit to cables meeting American Concrete Institute Codes or any codes. Regarding the argument that the cable is not supported above the ground, examiner disagrees noting that the drawings clearly show that the cable would be supported above ground as the cable would be supported in the circular portion which is help above the bottom surface by the legs extending radially from the circular cable receiving portion.

#### **Regarding applicant's arguments to the Fisher reference:**

Applicant argues that the receptacles of Fisher are closed loops and therefore are not capable of receiving the post tension cable after final placement. Examiner

Art Unit: 3635

disagrees noting that even though the receptacles are closed loops they are partial open on the sides and a post tension cable is capable of sliding through into placement. Regarding the term post tension cable in view of the American Concrete Codes see the above remarks.

***Claim Rejections - 35 USC § 112***

Claims 1, 6, 12 and depending are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite as the claims recite the limitation "different heights, the heights being equally spaced apart, from the bottom of the concrete form". This is indefinite as it is contradictory language, the claims are either at different heights or equally spaced apart heights (does applicant intend for the claim limitation to be equally spaced apart heights *from each other?*), from the bottom, but it is unclear how they can be both.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-4, 6-10, 12-14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (4644727).**

In regards to claim 1: Hanson et al. teaches a multi-level chair for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, skid multi-level chair (Figure 10) comprising:

a body including a plurality of partially enclosed receptacles (Figure 1, elements 12; Figure 5, element 30) adapted to receive post tension reinforcement cable after final placement of the chair (where the cable can slide into position through the open sides), the plurality of receptacles comprising receptacles positioned at different heights, the height being equally spaced part heights from the bottom of the concrete form (as best understood) (Figure 10, where element 31 is at the top of the chair and elements 12 are at the bottom), said receptacles being adapted to support a post-tension reinforcement cable of a predetermined diameter (Col. 2, lines 21-22) in an arcuate orientation above the bottom of the concrete form.

In regards to claim 2: The multi-level chair of claim 1 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 3: The multi-level chair of claim 1 above, wherein said body has an inverted V-shape (Figure 10) including a pair of legs extending downwardly from an apex of said body. Where the apex is at element 30 and the legs are elements 34 and 32.

In regards to claim 4: The multi-level chair of claim 3 above, wherein said receptacles are at staggered heights along said legs (Figure 10, where the receptacles 31 and 12 are at different elevations of the chair with 31 being the uppermost).

In regards to claim 6: Hanson et al. teaches a multi-level chair (Figure 10) for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising:

an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), said body including multiple partially enclosed receptacles adapted to receive post tension reinforcement cable after final placement (where the cable is capable of sliding into position), said multiple open receptacles comprising at least three receptacles positioned at different heights, the heights being equally spaced apart heights, from the bottom of the concrete form (as best understood) along said legs (Figure 1, elements 12; Figure 5, element 30), each of said receptacles being sized to support said post-tension reinforcement cable (Col. 2, lines 21-22) so that a user may place said post-tension cable in a selected one of said receptacles and support said post tension cable in an arcuate orientation above the bottom of the concrete form.

In regards to claim 7: The multi-level chair of claim 6 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 8: The multi-level chair of claim 6 above, wherein said receptacles are identically sized (Figure 3, which depicts the receptacle used in the chair).

In regards to claim 10: The multi-level chair of claim 6 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

In regards to claim 12: Hanson et al. teaches a multi-level chair for supporting a concrete reinforcement cable under tension at a fixed height from a bottom of a concrete form, said multi-level chair comprising:

an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), each of said legs having a fixed length and multiple partially enclosed receptacles adapted to receive ost tension reinforcement cable after final placement of the chair (where the cable is capable of sliding into position) comprising at least two receptacles, positioned at different, heights (Figure 1, elements 12; Figure 5, element 30) from the bottom of the concrete form along said length of said leg for supporting said reinforcement cable (Col. 2, lines 21-22), wherein a user may support said reinforcement cable in each receptacle in an arcuate orientation above the bottom of the form.

Hanson does not disclose that the multiple receptacles of one of said legs are positioned at different heights with respect to said multiple receptacles of the other of said legs. However applicant has not disclosed that such a feature solves a stated problem, is used for a particular purpose or provides an advantage. It would have been a matter of obvious design choice to one of ordinary skill in the art to modify the receptacles of Hanson as both chairs would perform, equally well, the same function of supporting a reinforcement. Therefore, it would have been prima facie obvious to modify Hanson to obtain the invention as specified in the claims because such a modification

would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hanson.

In regards to claim 13: The multi-level chair of claim 12 above, wherein said body is injection molded plastic (Col. 2, lines 65-66). In regards to claim 14: The multi-level chair of claim 12 above, wherein each of said legs terminates in a foot (element 18). In regards to claim 17: The multi-level chair of claim 12 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (4644727). Hanson et al. teaches a tension cable chair as in claims 6 and 12 above. Hanson is silent as to the distance between cable receiving receptacles. Applicant has not disclosed that having the receptacles spaces  $\frac{1}{4}$  or  $\frac{1}{2}$  inches apart solves any stated problem or is for any particular purpose or provides an advantage. Moreover, it appears that the chair and receptacles of Hanson et al., or applicant's invention, would perform equally well with the receptacles spaced any distance. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Hanson such that the receptacles be spaced  $\frac{1}{4}$  or  $\frac{1}{2}$  inches apart because such a modification would have been considered a mere design consideration which fails to patentable distinguish over Hanson.

**Claims 1, 3, 5-6, 11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher (6082068).**



Art Unit: 3635

Regarding claims 1 and 6: Fisher discloses multi-level chair (Figure 2) capable of supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising:

a body including a plurality of partially enclosed receptacles (13, 17, 21) adapted to receive post tension reinforcement cable after final placement of the chair (where the cable can slide into position), the plurality of receptacles comprising at least three receptacles positioned at different heights, the heights being equally spaced apart, from the bottom of the concrete form (as best understood), from the bottom of the concrete form, said receptacles are capable of supporting a post-tension reinforcement cable of a predetermined diameter in an arcuate orientation above the bottom of the concrete form.

Regarding claim 3: The multi-level Chair of claim 1, wherein said body has an inverted V-shape including a pair of legs (23 and 25) extending downwardly from an apex (11) of said body (Figure 2).

Regarding claims 5 and 11: The multi-level chair of claims 3 and 6, wherein said chair is nestably stackable (Figure 5 and Col. 4, line 8).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3635

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



/J. CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3635

JL  
08/27/2007